Accordingly, in compliance with Order 30, the Receiver submitted his accounts to the Court for the purpose of passing them verified by his affidavit to which was annexed the declaration jointly made by the applicants as permitted under Order 41 rule 5(2). As the declaration formed part of the Receiver's affidavit, it was a declaration which the Court was authorised by the Rules of the Supreme Court to receive as evidence in the receivership proceedings and was therefore a declaration within the meaning of section 199 of the Penal Code. The learned Chief Judge allowed the appeal by the Public Prosecutor and ordered a fresh joint trial of the applicants before another District Judge.

The first ground advanced on behalf of the applicants in support of the application is that it is not open to them to plead before the Subordinate Court that the declaration was not a declaration within the meaning of section 199 of the Penal Code inasmuch as the Subordinate Court would be bound by this ruling made by the learned Chief Justice. The High Court, however, would not be so bound and would be in position to entertain a challenge to this ruling. In view of this, the applicants, so they contended, would not have a fair trial before the Subordinate Court.

In my opinion this ground clearly cannot be sustained. First, plainly the applicants cannot raise the same issue again in the Subordinate Court. It had been raised and argued before the Subordinate Court which gave its decision thereon. It then went on appeal to the High Court and was further argued before the learned Chief Justice; he held that the Subordinate Court erred in law and he ruled that the declaration was a declaration within the meaning of section 199 of the Penal Code. The issue, insofar as the two cases, DAC 4151 and 4152 of 1983, are concerned, had been fully argued and had been decided upon, and such a decision is binding on the applicants; surely the applicants cannot re-open this issue. To say that because of this ruling the applicants would not have a fair trial in the Subordinate Court is an argument totally untenable and is a misconceived argument. Secondly, in seeking to transfer the two cases to the High Court with a view to raising the same issue again, which had been decided upon after full argument, is, in my view, tantamount to an abuse of court process.

Next, it was argued on behalf of the applicants that the two cases would involve some questions of law of unusual difficulties and on that ground they should be transferred to the High Court. This ground has not been made out to my satisfaction. I am unable to discern any question of law of unusual difficulty which is likely to arise in these cases. Initially, the question, namely, whether the document signed by them jointly was a declaration within the meaning of section 199 of the Penal Code might have posed some difficulty, but that has now been resolved by the decision of the learned Chief Justice.

Lastly, the applicants relied on the fact that they are Chairman and Secretary General respectively of a political party in opposition to the party in power and it is expedient for the ends of justice that they should be tried in the High Court. The fact that they hold such positions in a political party is irrelevant, and again it has not been made out to my satisfaction that an order for transfer ought to be made on that ground.

Application dismissed.

Solicitors: *J. B. Jeyaretnam & Co.*

KULWANT v. PUBLIC PROSECUTOR

[O.Cr. J (Punch Coomaraswamy J.) April 17, 1986]

[Singapore – Criminal Motion No. 12 of 1985]

Criminal Law and Procedure – Statement by accused to Police before being charged – Proceedings about to commence in lower court – Application for certified copy of accused's statement to Police – Forum and time for application – Jurisdiction of the High Court – Supreme Court of Judicature Act (Cap. 15), ss. 7(a), 15, 18, 23 & 27 – Criminal Procedure Code (Cap. 113), ss. 5 & 57(1).

Evidence – Right to a certified copy without right to inspect – Evidence Act (Cap. 5), ss. 76, 78 & 79.

The applicant was awaiting committal proceedings before a Magistrate for the offence of rape. He made two statements to the Police. One was under section 121(6) of the Criminal Procedure Code. The other was made earlier. He applied to the High Court to be furnished with certified copies of a number of documents arising out of the investigations. He was furnished with a certified copy of the first information report. His application for other documents was abandoned and he proceeded only with his application for a certified copy of the earlier statement to the Police.

Held: (1) the High Court has no jurisdiction to hear this application because:

(a) there is no provision in the Supreme Court of Judicature Act giving any such jurisdiction;

(b) if the application was under section 57(1) of the Criminal Procedure Code, the application should be made not to the High Court, but to the trial court, in this case the Magistrate who will conduct the preliminary inquiry;

(2) barring applications for documents referred to in the charge, an application under section 57(1) to the trial court should be made only after the prosecution calls evidence. The rule of relevancy must be strictly enforced. Only in the course of proceedings will there be material on which the Court can decide on relevancy and the necessity or desirability of compelling production of the required documents. The application should be made only after such material becomes available;

(3) section 78 of the Evidence Act gave a right to a certified copy of a public document where there was a right to inspect that document. No right to inspect is given by the Evidence Act. It must be found in some other statute. The applicant had no right under any law to inspect a statement he made to the Police. Therefore, he cannot ask a court to compel production of a certified copy of his earlier statement;

(4) when a court issues or refuses to issue a summons under section 57(1) there is no right of appeal against such issue or refusal but it can be made a ground of appeal after final order on the conclusion of proceedings;

(5) there is no warrant under statute or the common law to introduce into criminal proceedings the process of discovery in civil proceedings.

Cases referred to:

(1) *Raymond Chia Kim Chwee* v. *Public Prosecutor* and *Public Prosecutor* v. *Zainal* [1985] 2 M.L.J. 436 (S.C.).

(2) *Public Prosecutor* v. *Hoo Chang Chwen* [1962] M.L.J. 284.

(3) *Public Prosecutor* v. *Menon* [1978] 2 M.L.J. 152.

(4) *Maleb bin Su* v. *Public Prosecutor* [1984] 1 M.L.J. 311.

(5) *Assistant Collector of Customs* v. *Melwani* A.I.R. 1970 S.C. 962.

(6) *Practice Note* – Guidelines of the Attorney-General of England on disclosure of information to the defence [1982] 1 All E.R. 734; 74 Cr. App. R. 302.

(7) *Reg.* v. *Lambeth Metropolitan Stipendiary Magistrate ex parte McComb* [1983] Q.B. 551; [1983] 1 All E.R. 321; [1983] 2 W.L.R. 259 (C.A.)

(8) *Teo Hock Seng* v. *Public Prosecutor* [1978] 2 M.L.J. 1; [1978] L.S. Gaz. Rep. 343 (P.C.)

[The following cases were among those cited in argument: *Anthony Gomez* v. *Ketua Polis, Daerah Kuantan* [1977] 2 M.L.J. 24; *Khoo Siew Bee* v. *Ketua Polis, Kuala Lumpur* [1979] 2 M.L.J. 49; *Haji Abdul Ghani bin Ishak* v. *Public Prosecutor* [1980] 2 M.L.J. 196; *R.* v. *Bryant & Dickson* (1946) 31 Cr. App. R. 146; *Ioannou* v. *Demetriou* [1952] A.C. 84; [1952] 2 All E.R. 179 (P.C.); *Dallison* v. *Cafferey* [1965] 1 Q.B. 348, [1964] 2 All E.R. 610, [1964] 3 W.L.R. 385 (C.A.).]

CRIMINAL MOTION.

R. Murugason for the applicant.

Tan Teow Yeow and *Mrs. G. Pang* (Deputy Public Prosecutors) for the respondent.

Amarjit Singh, amicus curiae.

Cur. Adv. Vult.

P. Coomaraswamy J.: Whilst awaiting appearance before an examining Magistrate for determination of whether or not he should be committed for trial in the High Court on a charge of rape, the applicant sought an order that the High Court compel the respondent to furnish him with certified copies of certain document.

He apparently made two statements to the Police. The second of these was made under section 126(6) of the Criminal Procedure Code (CPC). The other was made earlier. The applicant claims it was made under section 121(5) CPC. The prosecution say that it was made under section 120 CPC. Section 121(5) does not provide for the making or recording of statements. It merely provides for uses to which a statement can be put. As the statement in question was made earlier than the one under section 121(6), I will refer to it as "the earlier statement."

By way of "criminal motion," the applicant sought an order from the High Court that the Public Prosecutor furnish him with a certified copy of each of certain documents arising from the investigation into the alleged offence. Requested copies were of:

(a) the information first received and recorded under section 114 CPC ('the first information report');

(b) extracts from the station diary;

(c) extracts from the charge book; and

(d) the earlier statement.

The first information report has been supplied to the applicant as indeed was his statement under section 121(6), CPC. Mr. Murugason, counsel for the applicant, very wisely abandoned at the final hearing before me applications in respect of ex-

tracts from the station diary and the charge book. The only issue therefore before me was the application in respect of the earlier statement.

At first hearing, there was argument on each of the above documents. Reserving judgment, the question arose in my mind of whether the High Court had jurisdiction to entertain an application of this nature. I therefore asked the parties to address me further on whether the High Court had jurisdiction to hear a "criminal motion" for its present purpose. In doing so, I acceded to Mr. Murugason's request that in view of the general and wider interest in the matter, both on jurisdiction and substance, I would invite the Law Society to nominate counsel to appear as *amicus curiae*. Mr. Amarjit Singh was nominated. I am grateful to him for his full and comprehensive arguments, both in favour and against the present application. Mr. Fong Kwok Jen, who appeared earlier for the Public Prosecutor, was out of the country and was not able to be present at the last hearing.

There are only two statutes of relevance on the question of jurisdiction. The first is the Supreme Court of Judicature Act (SCJA) (Cap. 15) and the other is the CPC.

Before I turn to the statutes on jurisdiction, I should deal with sections 76, 78 and 79 of the Evidence Act (Cap. 5, 1982 Reprint). These sections were the foundation for each of Mr. Murugason's various submissions on the High Court's jurisdiction.

Section 76 specifies what are the "public documents." Section 78 provides that "every public officer having the custody of a public document *which any person has a right to inspect* shall give that person on demand a copy of it" (emphasis added) certifying that it is a true copy. Section 79 provides that such certified copies may be produced in proof of the contents of public documents. Mr. Murugason's argument was that section 78 gave the applicant a right, because of his "real and tangible interest" in it, to inspect the earlier statement, a public document; as a consequence of this right, he had the further right to a certified copy.

Section 78 does not give any right to inspect. It merely gives a right to a certified copy of a particular public document where there is a right to inspect that particular public document. The right to inspect must be found in a statute (even where there is a "real and tangible interest"), not in section 78. Examples of such a right to inspect, either to the public at large or to a particular category of persons, can be found in section 18 of the Bankruptcy Act (Cap. 18), section 43(10) of the Women's Charter (Cap. 47), section 12(1) of the Companies Act (Cap. 185), section 23(2) of the Accountants Act (Cap. 212) and sections 19 and 20 of the Registration of Deeds Act (Cap. 281).

Section 78 is therefore of no avail to the applicant unless he can establish a statutory right to inspect his earlier statement to the Police. Mr. Murugason was unable to refer me to any law which gave the applicant such a right. Therefore, the Evidence Act is of no assistance whatsoever to the applicant in this case.

There are, of course, many instances where the Police and other administrative bodies provide certified copies of public documents in their possession. These are clearly in exercise of administrative discretion and not in response to a request under a statutory right of a member of the public. To say that section 78 gives a right of inspection is a totally unwarranted stretching of the language of that provision and will destroy the necessary and justified confidentiality of the administration *and* of private persons involved in the bulk of public documents.

Section 7(a), SCJA provides that the High Court shall exercise original and appellate criminal jurisdiction. Section 15 describes the type of cases in which the High Court has original criminal trial jurisdiction. These two sections have no application. There is no appeal nor am I asked to exercise original *trial* jurisdiction.

Section 18 and paragraph 1 (which has the marginal note "Prerogative Writs") of the First Schedule headed "Additional Powers of the High Court" read as follow:

"18(1) The High Court shall have all such powers as are vested in it by any written law for the time being in force in Singapore.

(2) Without prejudice to the generality of subsection (1) of this section the High Court shall have the powers set out in the First Schedule to this Act:

Provided that all such powers shall be exercised in accordance wtih any written law or Rules of Court relating to them.

First Schedule

1. Power to issue to any person or authority directions,

orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari, or any others, for the enforcement of any of the rights conferred by any written law or for any purpose."

Mr. Murugason sought to invoke these provisions to give the High Court jurisdiction. Before an applicant can rely on this provision, he has to show that as provided in subsection (1) there is a written law vesting a power in the High Court or that the power invoked comes within the proviso to subsection (2), *i.e.*, that its exercise accords "with any written law or Rules of Court relating to them." There is no written law or Rule of Court which the applicant's counsel could cite as relevant to the present application. In any event, the remedies referred to in the paragraph of the First Schedule, as further indicated by the marginal note, are remedies in the nature of a prerogative writ. That is not the nature of the application here.

Mr. Murugason also argued that sections 23 and 27 of the SCJA gave the High Court jurisdiction to entertain this application. Section 23 gives "in accordance with provisions of any written law for the time being in force relating to criminal procedure" the High Court powers of "revision" in respect of criminal proceedings and matters in the subordinate courts. In this instance, there are yet no crminal proceedings or matters in any subordinate court relating to the charge against the applicant. In any event, there must in addition be a written law relating to criminal procedure under which the applicant could move the High Court. There is no such provision.

Section 27 gives the High Court general supervisory and revisionary supervision over all subordinate courts. As with section 23, this section has no application unless proceedings have, at least, commenced in a subordinate court.

The provisions I referred to exhaust all the possible provisions of the SCJA under which the High Court could possibly have jurisdiction in this matter.

The CPC has instances giving the High Court original jurisdiction other than trial jurisdiction to hear specific applications in criminal matters. Under section 184, the High Court is vested with power to transfer a criminal case from one court to another on the application of the prosecution or the accused. Another example is found in section 249 where the High Court can hear an application where a person desirous of appealing is debarred from so doing because of not having observed some formality or requirement of the CPC.

There is no point in my going through the CPC exhaustively to list out instances where the CPC gives the High Court original jurisdiction. I have referred to the two provisions merely to show that if the Legislature intended the High Court to have jurisdiction in a matter like the one before me, specific reference would have made to it in the CPC.

The only provision of the CPC which remotely has a bearing is section 57(1) which, omitting the proviso which has no relevance, reads:

"57(1) Whenever any court or police officer considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such court or officer, such court may issue a summons or such officer a written to the person in whose possession or power such document or thing is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order."

Mr. Murugason's most strenuous argument was under this provision. He cited a number of Malaysian cases in support of his argument that the High Court has original jurisdiction to compel production of any document to any person under a charge in a subordinate court if that person has a "real and tangible interest" in it and considered that document necessary or desirable for the purposes of an inquiry, trial or other proceeding.

On my reading of section 57(1), this provision, as far as a court (as opposed to a police officer) is concerned, only applies to the Court otherwise seised of the inquiry, trial or other criminal proceeding. It does not give the High Court any jurisdiction unless the High Court is itself, in that particular matter, exercising original jurisdiction in a criminal matter or is, under specific statutory provision, exercising appellate, revisionary or supervisory or other jurisdiction. Examples of such other proceedings are sections 184 and 249, CPC, to which reference has been made.

For procedure to bring the application before the High Court in the exercise of its original jurisdiction, Mr. Murugason relied on cases where applications were made to the High Court in West Malaysia under section 51(i) of the CPC there. This provision is identical to section 57(1) in Singapore. An examination of the cited cases will show

that in each report where reference is made to the means or procedure by which the matter came before the High Court in West Malaysia in the exercise of its *original* jurisdiction, the application was made under section 44(1) of the (West Malaysian) Specific Relief Act, 1950 (Act 137), which has no Singapore counterpart. Section 44(1) reads:

"A Judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court."

In *Raymond Chia Kim Chwee* v. *Public Prosecutor* and *Public Prosecutor* v. *Zainal*[1] the Supreme Court of Malaysia held that an application to a court for a summons under section 51 must be made to the court before which an inquiry or trial is being heard or pending. This decision may well bring an end to Specific Relief Act applications to the High Court in West Malaysia for issue of a summons under section 51(i) when an inquiry, trial or other proceeding is by or before a court other than the High Court. This is particularly so when regard is had to proviso (d) to section 44(1) which makes an application possible only if "the applicant has no other specific or adequate legal remedy."

The plain words of the provision are the starting point of any effort to interpret a statute. Our section 57(1) gives certain powers to courts and to police officers who conduct investigations. Courts have nothing to do with investigations. That subsection, stripped of all references to police officers and investigations, in order to look exclusively at its applicability to courts, will read:

"Whenever any *court* ... considers that the production of any document or other thing is necessary or desirable for the purposes of any .. inquiry, trial or other proceeding under this Code *by or before such court ..., such court* may issue a summons ... to the person in whose possession or power such document or thing is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons ..." [Emphasis added.]

A plain reading shows these inevitable and unarguable consequences:

(a) there must be an inquiry, trial or other proceeding by *or before a court;*

(b) *that* court (and no other) must consider the production of a document or other thing necessary or desirable for the proceedings *before it;*

(c) *that* court (and no other) may issue a *summons* (not an 'order' which can be issued only by a police officer) for production of the document or thing as specified in the summons.

This analysis is the only possible one. On it, the High Court clearly has no jurisdiction to hear an application of this type unless it is otherwise exercising jurisdiction in the case. In fact, in this case, no court has jurisdiction because, as would appear, no proceeding has as yet commenced in any court. The applicant is still waiting for a preliminary inquiry to commence to decide whether or not he should be committed for trial. Even if such an inquiry has commenced it will be before a magistrate. In the issue before me, it means that not only does the High Court have no jurisdiction; even a magistrate who can conduct committal proceedings has no jurisdiction *as yet* to hear an application under section 57(1).

In the *Raymond Chia* case, the Malaysian Supreme Court was of the clear view that "... the Court which must consider whether the production of the material or document asked for is necessary or desirable is the Court before which the trial *was pending or in which the trial was proceeding.*"

For reasons hereinafter appearing, I am of the firm view that (barring documents mentioned in the charge) an application under section 57(1) can be made to the trial court only *after* the recording of prosecution evidence has commenced. In many cases, depending on the nature of the document, application may have to be made at an appropriate time, later than commencement, when the trial is well under way before the court has before it the necessary material to decide relevancy to enable it to consider the necessity or desirability of production of the document.

Other consequences of my interpretation are that a subordinate court with jurisdiction to hear and acceding to an application under section 57(1) issues a *summons* and not an order. This summons or refusal to issue one is, in my view, not a "judgment, sentence or order" under section 246(1) CPC and is therefore not appealable, being only a procedural ruling.

This view accords with the longstanding decision of Rose C.J. in *Public Prosecutor* v. *Hoo Chang Chwen.*[2] Any other view, in the words of the learned Chief Justice, will "open the door to a number of appeals in the course of criminal trials on points which are in their essence

procedural. The proper time, of course, to take such points would be upon appeal, after determination of the principal matter in the trial court." The decision of Rose C.J. has been followed in Malaysia in *Public Prosecutor* v. *Menon*[3] and in *Maleb bin Su* v. *Public Prosecutor.*[4] I am conscious that in the *Raymond Chia* case, the Supreme Court took a different view. It may well be that that decision is restricted to cases where the application under section 51(i) relates to documents mentioned in the charge and is made before the prosecution opens its case.

If at end of proceedings the accused is acquitted, the correctness of the refusal to issue a summons under section 57(1) becomes an academic question to the defence. After a trial in a lower court, either side can, if there is an appeal, use the issue or refusal to issue a summons under section 57(1) as a ground of appeal or cross-appeal if thought justified.

Quite apart from the plain words of sections 57(1) and 246(1), there is a sound practical reason for the view expressed. Any other view can frustrate criminal proceedings and bring proceedings in a subordinate court almost to a halt. An accused person awaiting trial or on trial or one awaiting or undergoing committal proceedings can make successive applications, with or without justification, under section 57(1) and upon refusal of the application, appeal to the High Court. He can thereby bring the subordinate court proceedings to successive temporary hats. This consequence is clearly undesirable. My views:—

(1) that the exercise of powers under section 57(1) is a matter for the trial court;

(2) that a trial court should be asked to exercise these powers only in the course of proceedings and not before commencement of trial; and

(3) that interference by the High Court can unnecessarily hold up proceedings in the trial court;

all find support in the words of a five-judge bench of the Supreme Court of India in *Assistant Collector of Customs* v. *Melwani.*[5] This case involved section 94(1) (now 91(1) of the Indian Code which is, for present purposes, identical with section 57(1) of our CPC).

A magistrate, upon the accused's application, declined, in that case, to issue a summons to the prosecution to produce, before commencement of trial, the statements of witnesses recorded by the Customs authorities. In revision, not appeal, a Division Bench of the Bombay High Court reversed the magistrate on this point. The Supreme Court held the magistrate to have been correct and reversed the High Court.

The Supreme Court said (page 967) that, "Whether a particular document should be summoned or not is essentially in the discretion of the trial court ... Except for very good reasons, the High Court should not interfere with the discretion conferred on trial courts in the matter of summoning documents." The Supreme Court went on to describe as "good reasons" those given by the magistrate for non-issue of a summons to produce the required statements before commencement of trial. The magistrate had said:

> "The recording of the prosecution evidence is yet to commence in this case and at present there are no materials before me to decide whether or not the production of any of the statements and documents named by the accused in his application is desirable or necessary for the purpose of the enquiry or trial."

On sub-paragraph (3) of my views set out above, the Supreme Court said that in section 94(1) matters, High Court "interferences would unnecessarily impede the progress of cases and result in waste of public money and time as has happened in this case."

The *Raymond Chia* case is the most recent and most authoritative one on section 51 of the West Malaysian CPC. It came before the Supreme Court on appeal from a decision of the High Court reported at page 63 of the same *Malayan Law Journal* volume.

Two persons (amongst others) were on a joint charge of forgery before a President of a Sessions Court. The charge arose out of five documents specified in the charge. The two accused persons made applications under section 51 to the President before whom they were being tried. Chia's application was in general terms. Zainal applied for "specified and unspecified documents, comprising 29 categories, including (his) cautioned statement and the first information report" (page 64).

The learned President responded to the applications of the two accused but he did not accede totally to the respective applications. His summons to produce was confined to documents referred to in the charges of forgery and documents removed

from possession of the accused.

There was an appeal to the High Court by the Public Prosecutor against the learned President's decisions. The appeal of the Public Prosecutor was allowed, but in the exercise of what he considered as his revisionary powers, the learned Judge ordered that photostat copies of the five documents referred to in the charge be furnished to the defendants.

By way of appeal and cross-appeal, issues were framed in five questions posed for the opinion of the Supreme Court. The Supreme Court held that the order of the learned High Court judge for production of the documents was not a proper exercise of his revisionary powers.

In discussing the questions posed to the Supreme Court, regard must be had to the nature of the documents requested by the accused in that case. The charge was one of forgery and the charge specifically mentioned five documents. The Supreme Court said that attention must be paid to sections 152, 153 and 154 of the West Malaysian CPC (sections 157, 158 and 159 in Singapore) relating to the framing of the charge. There is clearly a specific duty imposed on the prosecution to particularise the charge sufficiently so as to give adequate notice to the accused.

In this context, the Supreme Court did say that an application under section 51 can be made before the commencement of the trial but this view was qualified as appears hereafter. From the whole judgment, it is clear that an application before commencement of trial is only for the purpose of giving adequate particularity to the charge where the charge itself specifies documents.

To quote the Supreme Court, "Where the application under section 51(i) of the CPC is made in the course of the trial, the rule of relevancy must be strictly enforced" at page 439/E. The Supreme Court went on to say:

> "If the discretion is to be exercised before the commencement of trial the Court cannot anticipate how the prosecution will proceed. In other words the Court would not be justified to direct the prosecution to deliver to the accused all documents taken from him for that will not be a correct exercise of the discretion under section 51 of the Criminal Procedure Code."

The Supreme Court of Malaysia was dealing with two categories of documents. One is documents referred to the charge. The second is other documents. In respect of the latter, both the Malaysian and the Indian Supreme Courts expressed the same view in different terms. The Malaysian Court said that if a court is asked to exercise discretion "before commencement of trial the court cannot anticipate how the prosecution will proceed." The Indian Supreme Court quoted with approval the words of the magistrate. These words have already been quoted above. The views of these two Supreme Courts are my reasons and basis for saying that except in the case of documents referred to in the charge, an application under section 57(1) should be made only after the commencement of the recording of prosecution evidence.

The final part of Mr. Murugason's submission was based on section 5 of the CPC which makes English law relating to criminal procedure applicable in matters "for which no special provision has been made" by the CPC. In my view, there is, in this context, no lacuna in the CPC making it necessary to resort to English law. For his purposes, Mr. Murugason relied upon the "Guidelines"(6) of the Attorney-General of England for the disclosure of "unused material" to the Defence. These guidelines are reproduced in *Archbold's* Criminal Pleading (42nd Edition) page 328. Even if applicable, these guidelines are not English "law relating to criminal procedure." They have no legislative or judicial origin. Further, the passages he referred to deal specifically with the statements of persons other than the accused. Even with these, there are many specified exceptions in the Guidelines. One such is a statement that the prosecution can use in cross-examination if the maker is called as a witness by the defence. This clearly will exclude statements by an accused.

Both English cases cited by Mr. Murugason dealt with statements of persons other than the accused; not with a statement of an accused person. They are therefore of no assistance to the applicant in this "criminal motion."

For the reasons set out by me, I dismiss the application on the grounds that the High Court has no jurisdiction for the present application. Further, even if it had, every cited reason and authority is against grant of the application.

Section 57 also applies to things other than documents. These invariably are physical objects which the prosecution intend to use to prove their case. With these, adequate precautions are necessary; but the prosecution should give the defence "reasonable access to the exhibits for the purpose

of inspection and examination", to quote Donaldson M.R. in *Reg.* v. *Lambeth Metropolitan Stipendiary Magistrate, ex parte McComb*[7] at page 561. This in fact has been the practice here even in cases attracting the death penalty. (See *Teo Hock Seng* v. *Public Prosecutor*[8]).

By way of conclusion, let me make a few remarks which will put this judgment and the reasons behind it in perspective. I fully appreciate that entirely different considerations apply in civil actions between parties and in criminal cases where the State proceeds against an accused person. Notwithstanding this, I feel compelled to say that, even if I had jurisdiction, acceding to the applicant's request will be tantamount to introducing, as against the Public Prosecutor but not, be it noted, against an accused, the civil procedure process of discovery which is available between parties in litigation. There is no warrant in legislation or practice in Singapore or anywhere in the Commonwealth for such concept. In the *Raymond Chia* case, the Malaysian Supreme Court put it succinctly and with consummate clarity when the Court at page 434/A said, "The discretion (under section 51(i)) should not however be exercised so as to enable the accused to gain access to materials before the trial as in the case of pre-trial discovery and inspection of documents in a civil proceeding."

Application dismissed.

Solicitors: *Murugason & Co.*

MALAYSIAN REPORTS

NATIONAL UNION OF HOTEL, BAR & RESTAURANT WORKERS v. CASUARINA BEACH HOTEL SDN. BHD.

[S.C. (Wan Suleiman, Mohamed Azmi & Hashim Yeop A. Sani S.C.JJ.) February 22, 1984 & December 14, 1985]

[Kuala Lumpur – Federal Court Civil Appeal No. 237 of 1983]

Administrative law – Certiorari – Award of Industrial Court – Termination of collective agreement – Effect of – Collective agreement to cease binding effect in the absence of continuation or saving clause – Jurisdictional error – Award quashed – Industrial Relations Act, 1967, ss. 14 & 17.

Labour Law – Termination of collective agreement – Effect of – Industrial Relations Act, 1967, ss. 14 & 17.

In this case the parties had entered into a collective agreement effective for three years from June 1, 1975 to May 31, 1978. Article 1(b) of the agreement stipulated that "The agreement shall continue to be in force for a period of three years from the said date and shall continue thereafter unless termination by either party giving three months' notice in writing to re-negotiate but no such notice shall be given before March 1, 1978." Well after the three-year minimum period had passed, the appellant Union decided to re-negotiate with a view to entering into a new collective agreement. For that purpose, the respondent company requested the appellant Union to terminate the agreement as required by article 1(b) which the appellant Union did by giving three months' notice. The terminated agreement *inter alia*, made provision for the company to contribute 12% of the workers' total amount of monthly wages to the Employees Provident Fund, that is, the company should contribute 5% additional contribution to the statutory rates prescribed under the Employees Provident Fund Act. When the agreement was terminated the appellant Union took the view that notwithstanding such termination, the terms and conditions of the agreement including payment of the additional EPF contribution by the company should continue to remain in force until superseded by a new collective agreement. The respondent company took the opposite view and it informed the appellant Union that it would no longer be paying the additional EPF contribution since they were no more bound by the terms of the terminated agreement. The appellant Union lodged a complaint to the Industrial Court alleging non-compliance by the respondent company of article 30 of the 1975 agreement. The Industrial Court presided over by Mr. M. Abraham accepted the appellant company's interpretation of article 1(b) of the agreement and came to the decision that there was no non-compliance by the appellant company, as it was of the view that once the 1975 agreement had been terminated, it ceased to have binding effect on the parties. The appellant union was dissatisfied with the award of the Industrial Court and eventually filed another complaint for non-compliance by the company of various terms other than article 30 of the 1975 agreement. The complaint came up for hearing before another division of the Industrial Court presided over by